

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| THEODORE RIDGEWAY, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| v. |) | Case No. 1:20-CV-200 |
| |) | |
| |) | |
| JERI SMOCK, et al, |) | District Judge Baxter |
| |) | Magistrate Judge Kelly |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

This action was received by the Clerk of Court on July 7, 2020 and was referred to United States Magistrate Judge Maureen P. Kelly, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff's legal claims arise out of the treatment of a medical condition. Plaintiff claims that his Eighth Amendment rights were violated. As Defendants to this action, Plaintiff named Jeri Smock, Mike Edwards, Capt. Campbell, Sgt. Bell, Sgt. Putnam, Corrections Officers Buzzio, Bromley, Powell, and Hall, Nurse Blair, Superintendent Clark, Secretary John Wetzel, Ms. Webb, and the "Medical Department of SCI Albion." These Defendants are referred to as the Corrections Defendants and they are represented by the Office of the Attorney General. Plaintiff has also named Dr. Letizio, Dr. Hartwell, and Physician's Assistant Daniel Stroup as Defendants and they are represented by private counsel.

Defendants Letizio and Stroup filed an answer and the complaint. ECF No. 33. Dr. Hartwell filed a partial motion to dismiss, which remains pending and is not the subject of this Order. ECF No. 31.

Department of Corrections Defendants filed a motion to dismiss. ECF No. 16. Plaintiff filed a brief in opposition. ECF No. 38. On April 7, 2021, Magistrate Judge Kelly issued a Report and Recommendation recommending that the motion to dismiss be granted in part and denied in part. ECF No. 47. More specifically, Magistrate Judge Kelly recommended that

- Plaintiff's claims against Defendants Wetzel, Edwards, Smock and "the Medical Department" be dismissed;
- Plaintiff's claims against the Department of Corrections Defendants in their official capacities be dismissed;
- Any claims of First Amendment retaliation and/or falsifying documents or reports should be dismissed; and
- Motion to dismiss should be denied in all other regards.

Magistrate Judge Kelly further recommended that Plaintiff be permitted to amend his complaint as appropriate.

Plaintiff filed Objections to the Report and Recommendation arguing that the claims against Stroup, Edwards, and Smock should not be dismissed. ECF No. 50. The majority of Plaintiff's Objections center around the involvement and the state of mind of Defendant Stroup. However, Defendant Stroup has not filed a motion to dismiss and the Report and Recommendation does not recommend that the claims against him be dismissed. Instead, Defendant Stroup filed an answer and Plaintiff's claims against him remain.

Plaintiff also objects to the recommended dismissal of "the Medical Department." As Judge Kelly explained in her Report and Recommendation, the Commonwealth of Pennsylvania has immunity under the Eleventh Amendment for any claims brought against "the Medical Department." ECF No. 47, page 6. The Eleventh Amendment insulates any "alter ego" of the

state, such as “the Medical Department” from liability from suit. *Roach v. SCI Graterford*, 398 F.Supp.2d 379, 384 (E.D. Pa. 2005). The same applies to claims against state officials acting in their official capacity.

Accordingly, after *de novo* review of the pleadings and filings in the case, together with the Report and Recommendation and the Objections thereto, the following order is entered:

AND NOW, this 30th day of April 2021;

IT IS ORDERED that the motion to dismiss by the Corrections Defendants [ECF No. 16] is granted in part and denied in part. Plaintiff’s claims against Defendants Wetzel, Edwards, Smock and “the Medical Department” are dismissed; Plaintiff’s claims against the Department of Corrections Defendants in their official capacities are dismissed; the First Amendment claims arising out of retaliation and/or falsifying documents or reports are dismissed; and the motion to dismiss is denied in all other regards.

IT IS FURTHER ORDERED that Plaintiff may amend his complaint as appropriate.

AND, IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Kelly, issued on April 7, 2021 [ECF No. 47] is adopted as the opinion of the court.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge